

Storytelling on Appeal

Megan Sanders-Drazen

Wisconsin Defense Initiative

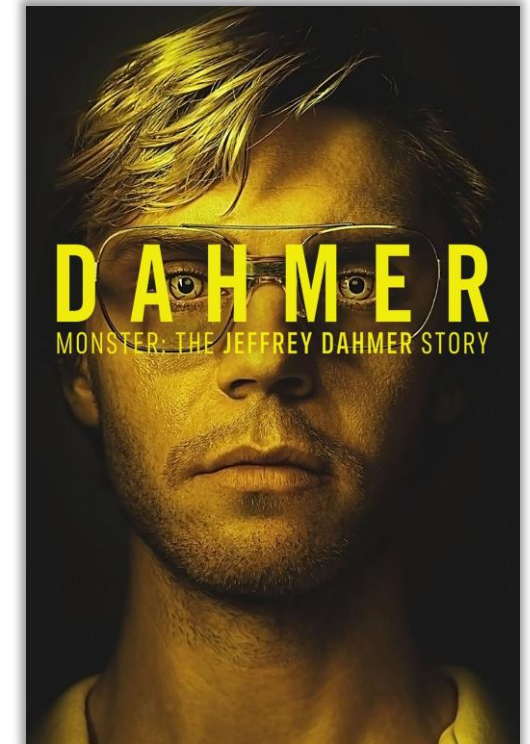
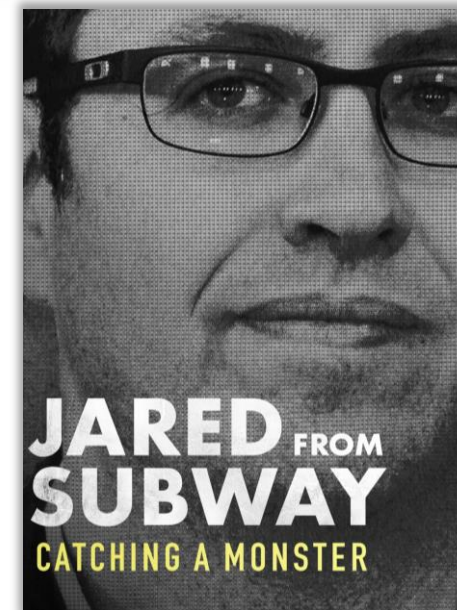
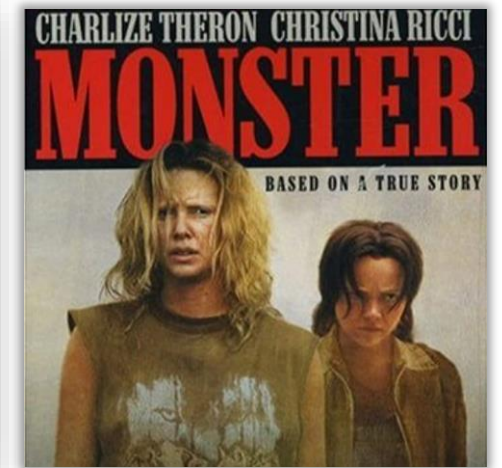
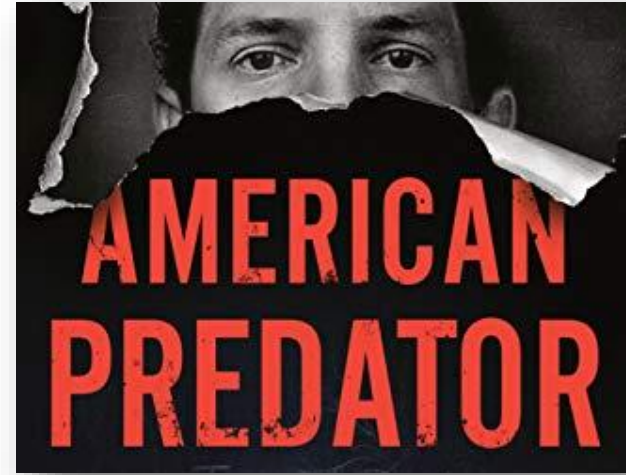
“[T]hey are not just gangs of kids anymore. They are often the kinds of kids that are called **super predators**. No conscience, no empathy.”

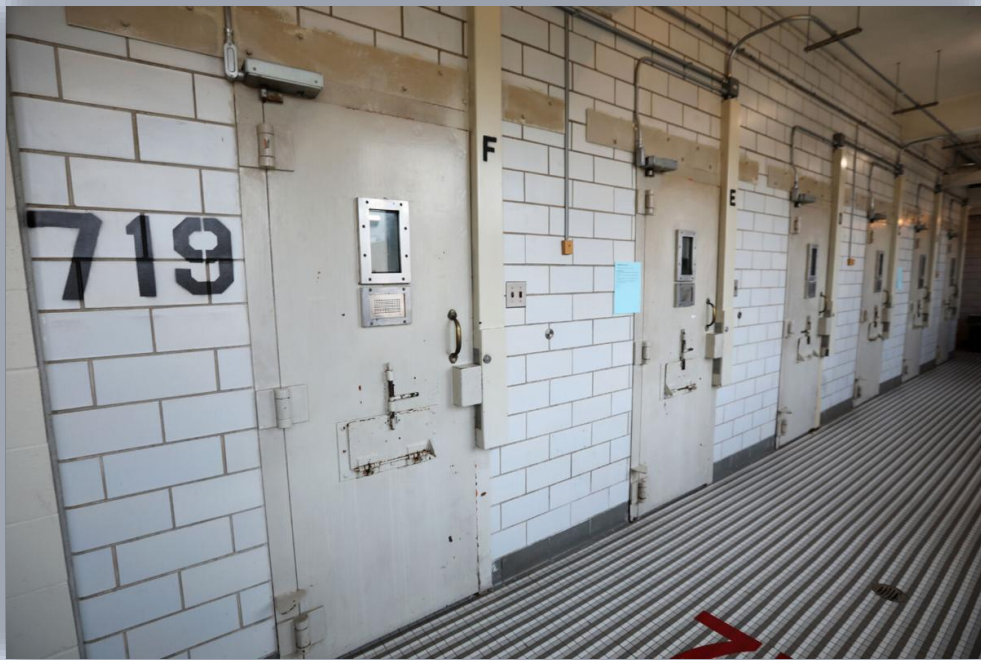
Local law enforcement hope the sentencing will help victims find peace to heal and send a message to other **predators** countywide.

“Many others died,” she said holding back tears, “and my heart breaks for them. Whoever did this is **not human**.”

For Former Friend of Boston Marathon Bomber, a Burden of Shame and Betrayal

Ten years after the attack that killed three people and injured hundreds, Youssef Eddafali still wrestles with guilt and anger over the “**monster**” he thought he knew.







Story =
character + conflict + resolution

- Your client is the ***character***
- The unfairness your client has endured is the ***conflict***
- The ***resolution*** is in the court's hands

3 Key Principles of Writing Your Client's Story

- (1) Law enforcement's story is at the heart of most criminal cases. Give the court your client's ***perspective***.
- (2) Include what's ***relevant***. Eschew the rest.
- (3) Readers need to reach their own conclusions. ***Show, don't tell.***

PERSPECTIVE

The point of view your story focuses on.

- Help your reader identify with, root for, and care about your client.
- Keep your reader from focusing on the plight of someone whose interests oppose your client's.

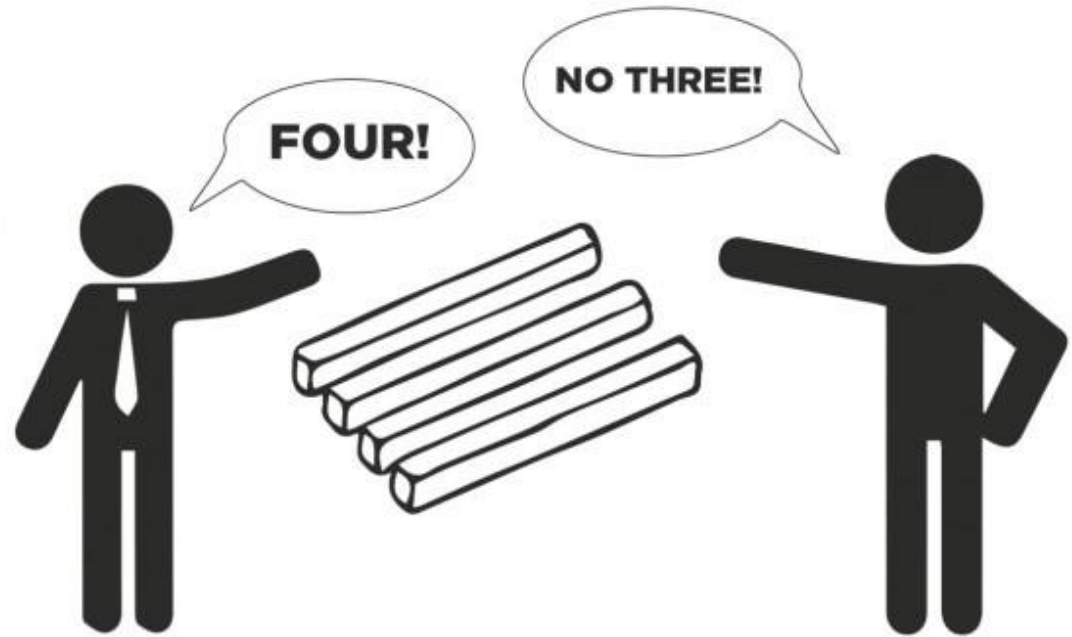
On April 20, 2022, Deputy Matthew Neil was dispatched to a two-vehicle accident involving a suspected intoxicated driver on Highway 41. When he arrived at the scene, Neil found paramedics treating the driver of a totaled blue Ford Taurus. The second driver, identified as Al Baker, was sitting on the opposite side of the highway, near another totaled vehicle. He had a bandage on his head. Neil was informed that Baker had head injuries but was calm, alert, and not in significant pain. Baker would be transported to a hospital for further treatment, and Neil was directed to follow him there.

En route, Deputy Neil learned that the Taurus driver had 5 prior OWIs (all from several years ago), and Baker had 3 (all within the past few years). He also learned that an officer saw the crash and said the Taurus driver caused it.

Deputy Neil waited for medical personnel to stabilize Baker. Then he sought Baker's consent for a blood test. Baker did not hesitate in agreeing. The test was positive for THC, a restricted controlled substance.

Al Baker was driving north on Highway 41 when he was approached from behind by a speeding drunk driver and a police officer chasing that driver. Baker used his turn signal, slowed down, and headed to the shoulder of the road. As Officer Carter Davis later put it, “he did everything right.” Nevertheless, Baker was struck by the drunk driver. His car flipped over, rolled down the highway several times, and crashed into a median wall—totaled. Officer Davis assumed Baker was dead until he heard him screaming.

In the emergency room, while receiving treatment for extensive head lacerations, Baker signed a consent form for a blood draw that Officer Davis said would help with the drunk driver’s prosecution. Tests revealed a small amount of THC. Baker later said he regularly smoked marijuana and had probably done so the day before the crash.



We want the judge to see things our way.

- The character to focus on will *almost* always be your client
- Where/when you begin your facts is key

RELEVANCE

Decide what you need and what you want. Edit hard.

- Is the fact necessary to understand the issue?
- Is the fact helpful to convey your client's story?
- Is the State sure to bring the fact up?

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SHOW, DON'T TELL

Leading your readers to a conclusion with facts,
but leaving the conclusion itself unsaid.

- Trim adjectives and adverbs; they can be pushy and undermine your credibility.
- Ask yourself, “why?” (Your reader wants to know.)
- Consider psychic distance. How showy is too showy?

Explained by
common sense

State's response brief

From these facts, in these circumstances, the trooper could draw the "specific, reasonable inference[]" that there was a reason for Baker's sudden change in demeanor and **inexplicable** refusal, at first, to take shelter in the squad car, and that the reason was that Baker did not want the officer to discover the weapon he was carrying. The frisk was therefore lawful.

Defendant's reply brief

The State argues that preferring to wait on the side of a highway, at night and in cold weather, is "inexplicable." The State's incredulity is hard to square with the reality of police-citizen conflict—especially when the citizen is a 20-something Black man, like Baker when Officer Neil urged him to get into his squad car.

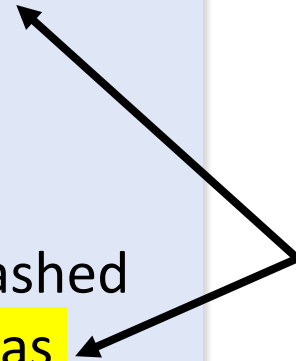
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Cases from the United States Supreme Court and numerous state and federal jurisdictions have recognized that the history of police violence in this country means many Americans feel less, not more, safe in the "shelter" law enforcement have to offer.

Explained by
case law

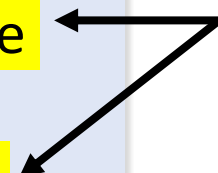
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Baker was the victim in a horrific accident.

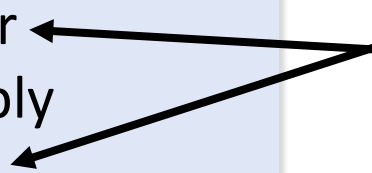


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Officer Davis coerced Baker, in a vulnerable moment, to consent to the blood draw.



This prosecution is an outrage. Baker really did nothing wrong and has suffered enough.



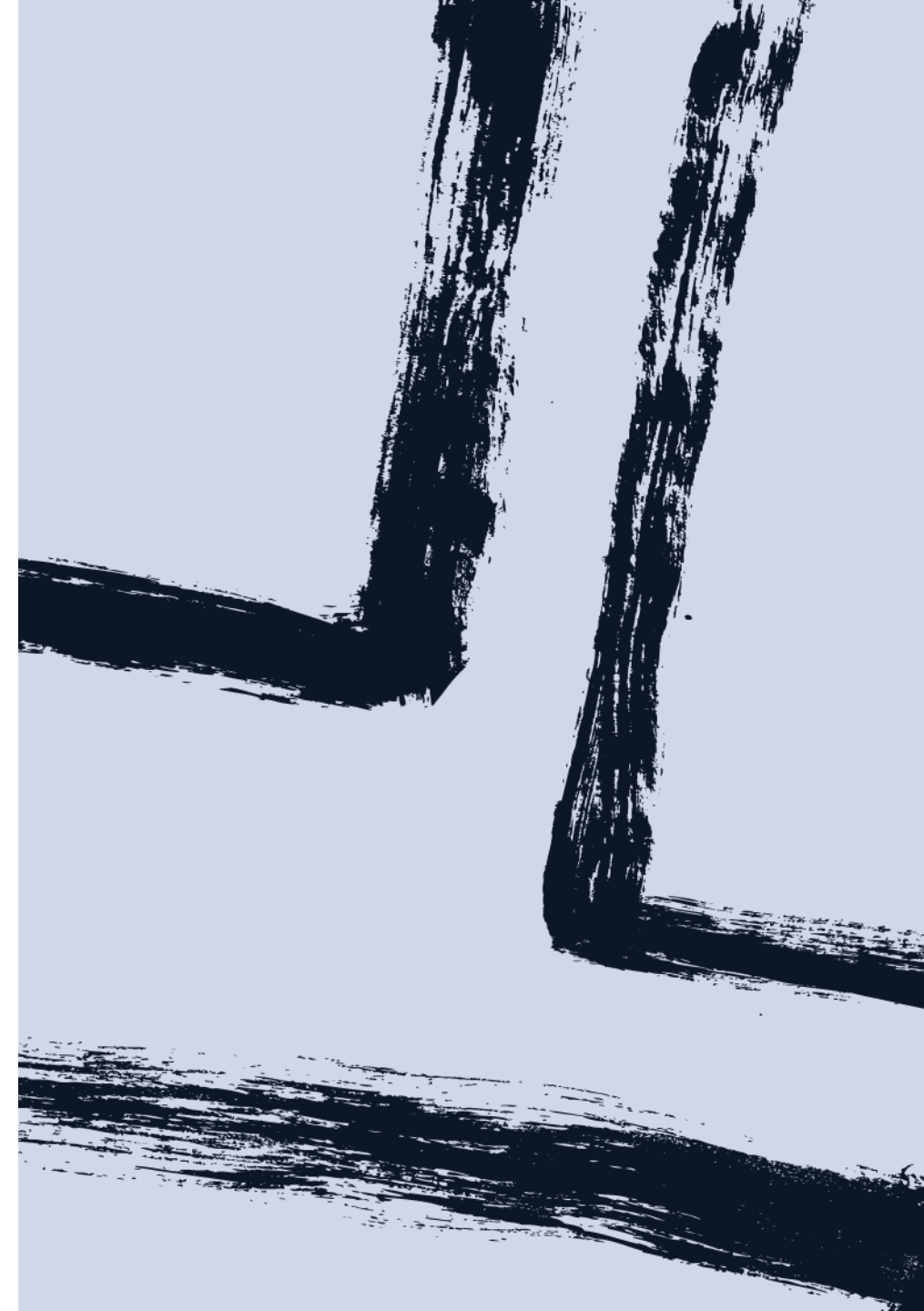
One night, law enforcement interviewed a suspect in a child sexual assault investigation.





Late one night, Deputy Neil interrogated Baker regarding allegations that Baker had sexually assaulted a 16-year-old girl. It was Baker's first time inside the sheriff's office. The interview room was uncomfortably small.

Officer Davis questioned Baker about Emma's allegations in a windowless room that barely fit its table and three chairs. The men's knees knocked into each other while they spoke. It was well past midnight when the interrogation began, and it continued for three and a half hours. Baker had never been to the sheriff's office before; the smell of bleach was overpowering. He tried to breathe through his mouth. He tried and failed to take deep breaths. And he tried to convince Officer Davis that he barely knew Emma, his 16-year-old daughter's swim teammate. With rising panic, he repeated: "I have never touched her in my life."





Facts matter to judges.

- Tell your client's story by focusing on perspective, relevance, and showing-not-telling.
- Remember that the goal is persuasion—not credibility.
- Every motion and brief we write is an opportunity to show the judge that our client is fully human.

Spring 2023
OSPD & MPDA
Public Defender
Conference



Wednesday, April 26
1:00pm-2:30pm
Megan Sanders-Drazen

